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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

CAROLYN LAWS,

As Trustee, etc., Plaintiff and
Respondent,

v.

WILLIAM J. LAWS,

Objector and Appellant;

OLD REPUBLIC TITLE CO.,

Respondent,

WENDY GIBSON,

Respondent.

A158156

(Solano County
Super. Ct. No. FPR045231)

William Laws (William) appeals from a probate court order that denied his motion to vacate a sale of real property effected by respondent Carolyn Laws (Carolyn) as trustee of a trust.¹ William contends the sale should have been vacated because, he argues, Carolyn had to obtain a new court order authorizing the sale, and the escrow agent—respondent Old Republic Title Company (Old Republic Title) —breached a duty it owed to him as a beneficiary of the trust. We will affirm the order.

¹ Because they have the same last name, we refer to William Laws and Carolyn Laws by their first names for clarity, without disrespect.

I. FACTS AND PROCEDURAL HISTORY

A. January 2017 Order for New Trustee and Property Sale

William was at one point the trustee of the Medora D. Laws Trust, dated July 16, 1997 (Trust), and Carolyn was a Trust beneficiary. In March 2012, Carolyn filed a “Petition to Compel Trustee to Account” in the probate court. After a trial, the court issued an order on January 27, 2017, finding that William had breached his fiduciary duties, removing him as trustee, appointing Carolyn as successor trustee, ordering that title to certain real property in Vallejo (Property) be transferred from William’s name back to the Trust, and directing Carolyn “to comply with the Probate Code to effect” a sale of the Property (January 2017 Trustee and Sale Order).

B. July 2017 Elisor Order

Following a hearing in June 2017, the probate court issued an order on July 26, 2017, appointing an elisor to sign a grant deed transferring the Property to the Trust (July 2017 Elisor Order). (See *Blueberry Properties, LLC v. Chow* (2014) 230 Cal.App.4th 1017, 1020 [“court typically appoints an elisor to sign documents on behalf of a recalcitrant party in order to effectuate its judgments or orders, where the party refuses to execute such documents”].)

On August 3, 2017, William filed a notice of appeal from the July 2017 Elisor Order (appeal number A152137).

C. October 2017 Order

On August 16, 2017, William filed a motion in the probate court to vacate the January 2017 Trustee and Sale Order. In October 2017, the court denied the motion because it was improperly filed in pro per while William had an attorney of record, and because the motion was untimely under Code of Civil Procedure section 663a (October 2017 Order).

William appealed the October 2017 order (appeal number A152963). We consolidated the two appeals.

D. April 2018 Stay Order Pending Appeal

Meanwhile, a Trust Transfer Deed conveying the Property to the Trust was recorded, along with copies of the January 2017 Trustee and Sale Order and the July 2017 Elisor Order. As of that point, the Property was property of the Trust. The Trust instrument provides that the Trustee has the power to “manage, control, sell, [or] convey” all “property” of the Trust, “from time to time in the discretion of the Trustee and without order or license of court.”

Despite Carolyn’s authority as trustee to sell Trust property without a court order, she filed a “Petition for Court Determination and Order to Sell Real Property” in February 2018. The petition is not in the record on appeal. (While court approval might have been sought due to the pending appeals, we cannot make that assumption since the document is not part of the record.)

In March 2018, William filed a Request for Immediate Stay in light of the pending appeals.

In April 2018, the probate court ruled that the January 2017 Trustee and Sale Order and the July 2017 Elisor Order were stayed under Probate Code section 1310 pending conclusion of the consolidated appeals (April 2018 Stay Order). The order reads in part: “[T]he appeal stays the operation and effect of these orders, meaning that Carolyn Laws ostensibly lacks authority to engage in any transactions as trustee until the appeal of the order appointing her is concluded. [¶] The court therefore orders the petition taken off calendar. Once both appeals have concluded and the remittiturs have issued, Carolyn Laws may place this petition back on calendar through the filing and service of a Notice of Hearing Form.”

E. August 2018 Affirmance of the July 2017 and October 2017 Orders

On August 7, 2018, this court affirmed the July 2017 Elisor Order and dismissed the appeal as to the October 2017 Order, which had denied William’s motion to vacate the January 2017 Trustee and Sale Order. The remittiturs were issued on October 10, 2018.

F. October 2018 Sale of the Trust Property

Later in October 2018, the Trust (through Carolyn as trustee) sold the Property to a third party. Old Republic Title served as the escrow agent for the transaction.

G. William’s April 2019 Motion to Vacate the October 2018 Sale

On April 16, 2019—about six months after the sale—William filed a “Motion to Vacate the Sale of Property at 3172 Terrace Beach Drive, Vallejo, CA and to Join as Defendants, Old Republic Title Co., Attorney Wendy Marie Gibson, and Carolyn Laws, and to Return Said Property to William Laws and to Remove Carolyn Laws as Trustee of the Medora D. Laws Trust.” The motion was not supported by a declaration or other evidence.

In his motion, Williams noted that the April 2018 Stay Order had stayed the January 2017 and July 2017 orders pending the consolidated appeals and had stated that “once both appeals have concluded and the remittiturs have issued, Carolyn Laws *may place the petition back on calendar* through the filing and service of a notice of hearing form.” (Italics added.) Carolyn had not placed the petition back on the court calendar, but instead put the Property on the market and sold it. Asserting that Carolyn kept the sale proceeds, William claimed she thus committed “a fraud and a theft” and violated the stay order. He further argued that Old Republic Title owed him a duty of care and breached it by not investigating the court case, even though a copy of the April 2018 Stay Order “was presented to Courtney

Larson of Old Republic [Title].” He urged that Carolyn, her attorney Wendy Gibson, and Old Republic Title should “be joined as defendants in this case, rather than filing a different lawsuit.”

Carolyn filed a verified opposition brief, arguing that she was authorized by the Trust to sell the Property without a court order and the sale closed after the appeals were concluded.

Old Republic Title filed a verified opposition brief, supported by a declaration and a request for judicial notice, contending among other things that the sale closed after the appeals concluded, Old Republic Title’s escrow file included the January 2017 and July 2017 orders indicating Carolyn’s authority to sell the Property and did not contain any stay order, Old Republic Title did not owe William a duty of care, and William’s motion to vacate the sale did not include any evidence supporting a claim against Old Republic Title.

On June 17, 2019, William filed a document of “Evidence” in support of his motion. It purported to include the January 2017 Trustee and Sale Order, the April 2018 Stay Order, the grant deed reflecting the sale of the Property, a business card of “Courtney Larson, Escrow Officer” for Old Republic Title, a copy of the Trust instrument, and excerpts from statutes, a website, and Black’s Law Dictionary. William did not provide any authentication or other foundation for these documents.

By written order dated June 18, 2019 (June 2019 Order), the probate court denied William’s motion to vacate the sale. The court adopted its tentative ruling, which read: “The Motion to Vacate is denied as moot, as the sale of the property was completed eight months ago and William Laws fails to provide any legal basis for waiting six months to file this motion.” This appeal followed.

II. DISCUSSION

William challenges the June 2019 Order denying his motion to vacate the sale. Although the order was explicitly premised on his motion being moot and his failure to provide legal justification for waiting six months to file it, William does not show these conclusions were erroneous. He tells us that the “case” was filed within the requirements of Probate Code section 16460, subdivision (a)(1)—which gives a beneficiary three years to assert a claim in regard to a final accounting—but there has been no final accounting in this case and the statute does not govern the time to file a motion to vacate the sale of the Property.

Because William has not shown that the court’s stated reason for its order was erroneous, the order must be affirmed. The parties, however, gloss over this point and instead debate the underlying merits of his motion. To assist the parties and the court in future proceedings, and as an alternative basis for our affirmance, we address those arguments briefly.

A. Carolyn Did Not Need Further Court Approval

William contends the April 2018 Stay Order required Carolyn to re-file her petition for court approval to sell the Property after the appeals concluded, and her failure to do so left her without authority to sell the Property.

His argument has no merit. The January 2017 Trustee and Sale Order appointed Carolyn trustee and directed her “to comply with the *Probate Code* to effect” a “sale of [the Property.]” (Italics added.) The Probate Code provides that a trustee has, “without the need to obtain court authorization . . . [t]he powers conferred by the *trust instrument*.” (Prob. Code, § 16200, subd. (a), italics added.) The trust instrument here provides that the trustee has the power to “manage, control, sell, [or] convey” all “property” of the

Trust, “from time to time in the discretion of the Trustee and *without order or license of court.*” (Italics added.) By virtue of the January 2017 Trustee and Sale Order, the Probate Code, and the Trust instrument, Carolyn had inherent authority as trustee to sell the Property, which had been made a trust asset.

It is true that the April 2018 Stay Order provided that once the remittiturs in the consolidated appeals had issued, Carolyn “*may* place this petition back on calendar.” (Italics added.) The order did not, however, *require* her to do so. (Prob. Code, § 12 [“‘may’ is permissive”]; *Estate of Miramontes-Najera* (2004) 118 Cal.App.4th 750, 758.) And there was no need for her to do so under the circumstances, since the stay of the January 2017 Trustee and Sale Order had been lifted and the authorization for the sale existed in the Probate Code and Trust instrument.²

B. William Provided No Evidence of Old Republic Title’s Liability

William contends he was “a first party to the escrow” as “a beneficiary under the terms of the trust” and Old Republic Title therefore owed him a “duty of care,” which it breached by closing escrow in defiance of the April 2018 Stay Order, a copy of which “was presented to Courtney Larson (court transcript 000059) of Old Republic Title.”

The argument is meritless. First, there is no evidence that a copy of the April 2018 Stay Order was presented to Courtney Larson or anyone at Old Republic Title. William provided no declaration to that effect. The page in the clerk’s transcript to which he refers is merely the unauthenticated copy

² William also complains that the court did not rule on his assertion that Carolyn violated the Probate Code, Civil Code, and Business and Professions Code. However, nothing in the record suggests the court failed to duly consider William’s arguments; the absence of a reference to those arguments in the June 2019 Order is explained by the fact that the untimeliness of William’s motion made it unnecessary to address the merits.

of Courtney Larson’s business card, which does not evince the delivery and receipt of the stay order.

Second, even if Old Republic Title received the April 2018 Stay Order, that order did not preclude Old Republic Title from closing escrow. As explained *ante*, the stay order did not require Carolyn to re-file her petition and obtain court approval before selling the Property.

Third, Old Republic Title did not owe William a duty of care. An escrow holder generally has no duty of care to non-parties to a transaction. (*Summit Financial Holdings, Ltd. v. Continental Lawyers Title Co.* (2002) 27 Cal.4th 705, 711–716; *Alereza v. Chicago Title Co.* (2016) 6 Cal.App.5th 551, 557–562.) Although William contends he was a “first party of the escrow” because he was a beneficiary of the Trust, he has not shown that Old Republic Title owed a duty to trust beneficiaries. (*Vournas v. Fidelity Nat. Title Ins. Co.* (1999) 73 Cal.App.4th 668, 672–674 [escrow agent did not owe a duty to trust beneficiaries to ensure the trustee had complied with beneficiary-consent provisions]; Prob. Code, § 18100 [third person assisting a trustee in the conduct of a transaction, if acting in good faith, for valuable consideration, and without actual knowledge that the trustee is exceeding its powers or improperly exercising them, “is not bound to inquire whether the trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise”].)

In sum, William fails to demonstrate error in the probate court’s denial of his motion to vacate the sale of the Property.³

³ On February 14, 2020, Old Republic Title filed a request for judicial notice of all pleadings and documents filed in the underlying probate case, the “dockets” in appeal numbers A152137 and A152963, and our opinion in those consolidated appeals. William opposed the request on March 9, 2020. We deferred ruling on the request until our consideration of the merits. As Old Republic Title acknowledges, the dockets of the probate court and this

III. DISPOSITION

The order is affirmed.

court are already in the record as augmented, as is our opinion in the consolidated appeals. The request for judicial notice is denied.

NEEDHAM, J.

We concur.

JONES, P.J.

BURNS, J.